



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

May 12, 2015
1505-VU-05 & 1505-VS-07
Exhibit 1

Petition Numbers: 1505-VU-05 & 1505-VS-07

Subject Site Location: SEC of 146th Street and Oak Ridge Road

Petitioner: AT&T Mobility by Bingham Greenebaum Doll LLP

Requests: **1505-VU-05:** The petitioner is requesting approval of a Variance of Use to allow a new Wireless Communication Service Facility in the Single-Family Low Density District (SF2) District (Chapter 13: Use Table); and,
1505-VS-07: The petitioner is requesting approval of a Variance of Development Standard to reduce the Minimum Building Setback Lines for a new Wireless Communication Service Facility in the Single-Family Low Density District (SF2) District (Article 4.5(E)).

Current Zoning: Single-Family 2

Current Land Use: Vacant/Utilities

Approximate Acreage: 0.9 acre+/-

Exhibits: 1. Staff Report
2. Location Map
3. Application
4. Construction Plans

Staff Reviewer: Kevin M. Todd, AICP

PETITION HISTORY

This petition will receive a public hearing at the May 12, 2015, Board of Zoning Appeals meeting

ANALYSIS

Location: The subject property is approximately 0.9 acre +/- in size is located near the southeast corner of Oak Ridge Road and a realigned portion of 146th Street (the "Property"). The property is located within the City of Westfield and Washington Township. The Property is zoned Single Family-2 (SF-2). Adjacent property to the north (across 146th Street) and west is zoned SF-2. Property to the east is public right-of-way (146th Street) because the roadway curves, and there is no nearby/adjacent private



property to the east. Property to the south is within the City of Carmel's jurisdiction, and is currently an institutional use (athletic fields for Our Lady of Mt. Carmel School and Church).

Variance Requests: Wireless Communication Service Facilities are not permitted by-right within the SF-2 zoning classification. The request is to allow a Wireless Communication Service Facility on the Property. In addition, the property is too narrow (north-to-south) to accommodate the required setbacks for a Wireless Communication Service Facility. As a result, the request includes a reduction of the north and south setback lines to 65 feet and 75 feet, respectively. The requirement from the UDO is that wireless communication towers abutting residential properties are to be no less than the height of the tower¹

Project Description: In order to provide a certain level of wireless communication service within this area of Westfield, new antenna equipment is needed. There are no existing nearby co-location options, so a new tower would be needed in order to install new equipment. The proposal is to install a new 120 feet tall wireless communication tower and ancillary equipment building(s) on the Property. As proposed, the tower would be designed to appear as a flag pole, and is referred to as a "stealth pole". Proposed access to the Property would be from an existing access drive off of Oak Ridge Road via an access easement. The proposal includes an equipment building would be approximately 275 square-feet in area. The proposal indicates fencing and landscaping would be installed around the perimeter of the wireless communication lease site. If the use is approved through this variance request, this project would require Development Plan review and approval by the Advisory Plan Commission.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan (the "Comprehensive Plan") identifies this Property within the "Suburban Residential" ² land use classification. The Comprehensive Plan does not address wireless communication facilities or other utility facilities.

PROCEDURAL

Public Notice: The Board of Zoning Appeals (the "BZA") is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the May 12, 2015, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

Conditions: The UDO³ and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

¹ Article 6.20 (E)(2) Wireless Communications Service Facilities; Development Standards.

² Westfield-Washington Township Comprehensive Plan, Land Use Concept Map (pg. 24).

³ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

May 12, 2015
1505-VU-05 & 1505-VS-07
Exhibit 1

Development Plan Approval: If the Board of Zoning Appeals approves the requested Variance of Use and Variance of Development Standard, then the use and site would be required to obtain Development Plan approval by the Advisory Plan Commission.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO⁴ requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variances of Use: The Board of Zoning Appeals shall approve or deny variances of use from the terms of the zoning ordinance. The Board may impose reasonable conditions as a part of its approval. A variance may be approved under Ind. Code § 36-7-4-918.4 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the variance of use arises from some condition particular to the property involved;
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought; and,
5. The approval does not interfere substantially with the comprehensive plan.

Variances of Development Standard: The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

⁴ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



FINDINGS OF FACT

1505-VU-05 (Variance of Use)

- A. If the Board is inclined to **APPROVE** the variance of use request, then the Department recommends the following findings:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that allowing a Wireless Communication Service Facility on the Property would be injurious to the public health, safety, morals, and general welfare of the community. Other utility infrastructure (natural gas pumping station) is located on the adjacent property to the west, and there is no evidence of harm to the community as a result of that facility. Adding a new tower would increase cell/wireless service in this area of Westfield.

2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

Finding: It is unlikely that the use and value of adjacent property will be affected in a substantially adverse manner. The facility is designed to blend into the surrounding area by appearing like a flag pole. Feedback from adjacent property owners should provide insight regarding the impact on adjacent properties.

3. *The need for the variance of use arises from some condition particular to the property involved:*

Finding: The subject property is not buildable for a stand-alone SF-2 use. The existing, adjacent natural gas pump station establishes the presence of utilities in the area. The petitioner has indicated that there are no existing co-location options to service this area. Given all of that, the Property's proximity to existing development and future growth lends itself to the proposed use.

4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:*

Finding: Strictly applying the zoning ordinance would not permit the requested use. Wireless communication facilities are not allowed by-right in residential zoning districts.



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

May 12, 2015
1505-VU-05 & 1505-VS-07
Exhibit 1

Current development conditions in the area warrant additional wireless equipment in order to provide a certain level of wireless service, according to information provided by the petitioner. This area of Westfield is currently underserved for wireless needs. The BZA should determine whether or not the inability to use the Property for a Wireless Communication Service Facility is an unnecessary hardship in the use of the Property.

5. The approval does not interfere substantially with the comprehensive plan:

Finding: The Comprehensive Plan does not address wireless communication facilities. The proposal neither frustrates nor further advances the vision of the Comprehensive Plan.

- B. If the Board is inclined to **DENY** the variance of use request, then the Department recommends the following findings:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

Finding: The view shed along a highly-traveled jurisdictional border street (146th Street) could be compromised if a 120-foot wireless communications tower is located on the Property. A new tower in this location could have a negative impact on the visitor's first impressions of the City, and thus the City's image and general welfare.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Finding: The use and value of adjacent property may be affected in a substantially adverse manner. Perceptions of living near a wireless communications tower may negatively impact the value of property in the nearby home markets.

3. The need for the variance of use arises from some condition particular to the property involved:

Finding: The property could be used in a manner that is consistent with permitted uses in the SF-2 District.



4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:*

Finding: Strictly applying the zoning ordinance would not permit the requested use. Wireless communication facilities are not allowed by-right in residential zoning districts. The Property could be used in a manner that is consistent with permitted uses in the SF-2 District.

5. *The approval does not interfere substantially with the comprehensive plan:*

Finding: The Comprehensive Plan does not address wireless communication facilities. The proposal neither frustrates nor further advances the vision of the Comprehensive Plan.

1505-VS-07 (Variance of Development Standard)

A. If the Board is inclined to **APPROVE** the variance of standard request, then the Department recommends the following findings:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that reducing the north and south setbacks for a Wireless Communication Service Facility on the Property would be injurious to the public health, safety, morals, and general welfare of the community. Adjoining land to the north is public right-of-way (146th Street), then vacant land beyond that. Adjoining land to the south is non-residentially used (athletic fields for the school/church). If the tower were to fall, it would be beyond a reasonable range of residential dwellings. The proposal complies with the required setback for wireless communication towers adjacent to commercial districts/uses (40 feet).

2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

Finding: It is unlikely that the use and value of adjacent property will be affected in a substantially adverse manner. The facility is designed to blend into the surrounding area by appearing like a flag pole. Feedback from adjacent property owners should provide insight regarding the impact on adjacent properties.



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

May 12, 2015
1505-VU-05 & 1505-VS-07
Exhibit 1

3. *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.*

Finding: Strictly applying the zoning ordinance would not permit the requested use. Wireless communication facilities are not allowed by-right in residential zoning districts. Current development conditions in the area warrant additional wireless equipment in order to provide a certain level of wireless service, according to information provided by the petitioner. This area of Westfield is currently underserved for wireless needs. The BZA should determine whether or not the inability to use the Property for a Wireless Communication Service Facility is an unnecessary hardship in the use of the Property.

- B. If the Board is inclined to **DENY** the variance of standard request, then the Department recommends the following findings:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is possible that reducing the north and south setbacks for a Wireless Communication Service Facility on the Property would be injurious to the public health, safety, morals, and general welfare of the community. A reduction would mean that in the event that the tower fell, it could fall into 146th Street (to the north) or it could fall into the adjoining athletic fields (to the south). This type of fall could be injurious to the safety of the community.

2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

Finding: The use and value of adjacent property may be affected in a substantially adverse manner. Perceptions of living near a wireless communications tower may negatively impact the value of property in the nearby home markets.

3. *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.*

Finding: Strictly applying the zoning ordinance would not permit the requested use. Wireless communication facilities are not allowed by-right in residential zoning districts. The Property could be used in a manner that is consistent with permitted uses and standards of the SF-2 District.



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

May 12, 2015
1505-VU-05 & 1505-VS-07
Exhibit 1

DEPARTMENT RECOMMENDATIONS

If the Board approves both cases (1505-VU-05 and 1505-VS-07), then the Department recommends the following conditions:

1. That the installed tower be substantially similar to what is depicted in Exhibit 4; and,
2. That any building constructed on the Property be completely screened from view on all sides by evergreen trees that are a minimum of eight (8) feet in height at installation and are spaced in a manner that creates a complete visual screen.